



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Mr. M. T. Junker, President
State Board of Education
Austin, Texas

Dear Sir:

Opinion No. 0-4674

Re: Authority of State Board of
Education to expend funds
appropriated to Joint Legis-
lative Advisory Committee to
defray expenses in discharging
duties which have devolved on
Board under Rural Aid Law.

Your letter of recent date submits the following
question:

* * *

"Does the State Board of Education have the
authority under Article 13, Section 2 of the act
cited, to employ an auditor and to defray such
other and necessary expenses incident to the
duties devolved upon it in lieu of the Joint
Legislative Advisory Committee and does the Board
have authority to pay such salaries and expenses
out of the \$8,000 appropriated for the purpose
of employing an auditor and such other and neces-
sary expenses incident to the duties of the Joint
Legislative Advisory Committee?"

Article XIII, Sec. 2, H.B. 284, Acts Reg. Sess., 47th
Leg., provides in part:

* * * Eight Thousand Dollars (\$8,000.00) for
the purpose of employing an auditor and for such
other and necessary expenses incident to the duties
of the Joint Legislative Advisory Committee. Such
auditor shall not receive more than Three Thousand
Six Hundred Dollars (\$3,600.00) per year out of
the sum hereby allocated. The auditor and other
authorized employees shall be appointed by the

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Committee and their salary and necessary expenses be paid on order of said Committee and all such employees shall be under the direct supervision of said Committee or its order. Each of the above named allocations is for each year of the biennium."

This Act, in creating and imposing certain duties on the Joint Legislative Advisory Committee, provided in Article XII:

"Should for any reason the Joint Legislative Advisory Committee fail or refuse to perform the duties herein imposed upon it or should the duties, powers, and functions of said Joint Legislative Advisory Committee become inactive or unenforceable, then, and in that event, such duties - - - shall be performed by the State Board of Education the same as if said Committee had not been created or authorized."

In our opinion No. 0-4609, we held that the attempt to vest in the Joint Legislative Advisory Committee the duties and powers prescribed by the Act, save and except the duty to study the school laws in order that the said laws might be re-codified, violated the Constitution of Texas, and that such duties and powers, save and except the study of the school laws, devolved upon and should be exercised by the State Board of Education under the terms of the saving clause above quoted. The result is that the Joint Legislative Advisory Committee still exists, but is stripped of all power and authority under the Act save the power and duty of studying the school laws.

The purpose of the Legislature in providing the \$8,000.00 appropriation was clearly to furnish funds to enable the duties attempted to be imposed on the Committee to be discharged. When those duties in part, under the Act devolved upon the Board, it is our opinion that the \$8,000.00 appropriation became available to the Board to pay the necessary expenses incident to the discharge of such duties of the Committee as have by the provisions of the Act to be discharged by the Board..

But the Committee is still in existence, and still has a duty to perform, i.e., the study of the school laws. The appropriation is to defray expenses incurred in connection with all the duties originally imposed on the Committee. The result,

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anomalous though it may be, is that we have an indivisible lump sum appropriation available to the Board and the Committee alike to the extent necessary to enable each to perform its respective duties.

The situation thus existing is one which presents practical difficulties, it is true. This affords no basis for ignoring the legislative mandate; rather, it furnishes an occasion for cooperation between the Board and the Committee to the end that the appropriation may be expended in such manner as to effectuate the legislative intent. For example, we see no reason why, if an auditor be necessary to the discharge of the functions of the Board and of the Committee as well, the respective bodies may not, in the spirit of cooperation, mutually agree upon the appointment of an auditor, the fixing of his salary, and the prescribing of his duties.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

R. W. Fairchild

R. W. Fairchild
Assistant.

RWF:nw

APPROVED SEP 3, 1942

Gerald C. Nunn

ATTORNEY GENERAL OF TEXAS

APPROVED
OPINION
COMMITTEE